

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CLIFFORD GREENE,

Plaintiff,

v.

ROBERT HALF INTERNATIONAL, INC.,

Defendant.

No. C05-0443RSL

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

This matter comes before the Court on “Defendant’s Motion for Summary Judgment and Supporting Memorandum.” Dkt. # 43. Plaintiff alleges that defendant, a specialized staffing firm, refused to send him out on legal assignments because of his age and terminated its representation of plaintiff when he complained of age discrimination. Plaintiff asserts discrimination and retaliation claims under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*, the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*, RCW 49.44.090, and the Washington Law Against Discrimination (“WLAD”), RCW 49.60 *et seq.* Defendant denies that age discrimination and/or a retaliatory motive prompted its actions and asserts that plaintiff was not given legal assignments because he could not compete with the many other applicants defendant represented. Defendant also asserts that it terminated its representation of plaintiff because he was rude and unprofessional with its staff.

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact which would preclude the entry of judgment as a matter of law. The party seeking summary dismissal of the case “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate “specific facts showing that there is a genuine issue for trial.” Celotex Corp., 477 U.S. at 324. “The mere existence of a scintilla of evidence in support of the non-moving party’s position is not sufficient,” however, and factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th Cir. 2001); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In other words, “summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favor.” Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995).

Taking the evidence presented in the light most favorable to plaintiff, the Court finds as follows:

### **Age Discrimination**

Age discrimination claims under the ADEA and the WLAD<sup>1</sup> involve shifting

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<sup>1</sup> Although RCW 49.44.090 provides protection from discrimination for persons between the ages of 40 and 70 years, it creates no specific remedy. Washington courts have recognized an implied cause of action under this statute, however, and have adopted the elements and shifting burdens discussed in the text. Bennett v. Hardy, 113 Wn.2d 912, 920-22 (1990). Because the parties have not analyzed plaintiff’s RCW 49.44.090 claim separately from his ADEA claim, the Court assumes that the statutes are sufficiently similar to produce the same results. See Douchette v. Bethel Sch. Dist. No. 403, 117 Wn.2d

1 burdens of proof:

2 [A] plaintiff must first establish a *prima facie* case of discrimination. If the  
3 plaintiff establishes a *prima facie* case, the burden then shifts to the defendant to  
4 articulate a legitimate nondiscriminatory reason for its employment decision.  
5 Then, in order to prevail, the plaintiff must demonstrate that the employer's  
6 alleged reason for the adverse employment decision is a pretext for another motive  
7 which is discriminatory.

8 Wallis v. J.R. Simplot Co., 26 F.3d 885, 889 (9th Cir. 1994) (quoting Lowe v. City of Monrovia,  
9 775 F.2d 998, 1005 (9th Cir. 1985), as amended, 784 F.2d 1407 (1986)). See also Griffith v.  
10 Schnitzer Steel Indus., Inc., 128 Wn. App. 438, 446-47 (2005), review denied, 156 Wn.2d 1027  
11 (2006). The ultimate burden of persuading the factfinder that the employer intentionally  
12 discriminated remains at all times with plaintiff. Washington v. Garrett, 10 F.3d 1421, 1432  
13 (9th Cir. 1994).

14 To establish a *prima facie* case of age discrimination, plaintiff must show that:  
15 (1) he was over the age of 40 and therefore within the protected class; (2) he applied for a  
16 position for which he was qualified; (3) he was not hired; and (4) the individuals who were hired  
17 were substantially younger and had equal or inferior qualifications. EEOC v. Ins. Co. of N.  
18 Am., 49 F.3d 1418, 1420 (9th Cir. 1995); Rose v. Wells Fargo & Co., 902 F.2d 1417, 1421 (9th  
19 Cir. 1990). See also Griffith, 128 Wn. App. at 446. Plaintiffs' burden in establishing a *prima*  
20 *facie* case is minimal and need only give rise to an inference of unlawful discrimination. If the  
21 elements of the *prima facie* showing are satisfied, plaintiff is entitled to a presumption that

22 805, 814 (1991) (state and federal age discrimination laws have substantially the same elements).

23 Neither party has discussed the merits of plaintiff's Title VII claim. Title VII of the Civil  
24 Rights Act of 1964 makes it unlawful for an employer to "discriminate against any individual  
25 with respect to his compensation, terms, conditions, or privileges of employment, because of  
26 such individual's race, color, religion, sex, or national origin." 42 U.S.C.

§ 2000e-2(a)(1). Age discrimination is prohibited by the ADEA and plaintiff's claim will be  
considered under that statutory scheme.

1 defendant unlawfully discriminated against him. Wallis, 26 F.3d at 889 (citations and  
2 quotations omitted).

3 Defendant is willing to concede, for purposes of this motion, that plaintiff has  
4 made a *prima facie* showing of discrimination. In order to rebut the presumption of  
5 discrimination that arises from the *prima facie* showing, defendant must articulate a legitimate,  
6 nondiscriminatory reason for its actions. Defendant has satisfied this burden by offering  
7 evidence that plaintiff was not competitive in the legal service market from the very beginning of  
8 their relationship and that his subsequent rude and unprofessional behavior made him an even  
9 less desirable candidate for placement as time went on. Defendant has also shown that it  
10 referred plaintiff for a number of non-legal jobs throughout the relevant time period, giving rise  
11 to an inference that age discrimination was not the motivating factor. As a consequence, the  
12 burden returns to plaintiff to show that defendant's articulated reasons for failing to send him  
13 out on legal assignments were pretext for discrimination. Nidds v. Schindler Elevator Corp.,  
14 113 F.3d 912, 918 (9th Cir. 1997).

15 At this point in the analysis, plaintiff must produce enough evidence to allow a  
16 reasonable factfinder to conclude that either (1) defendant's reasons for not placing him in legal  
17 positions were false or (2) the true reasons were discriminatory in nature. Warren v. City of  
18 Carlsbad, 58 F.3d 439, 443 (9th Cir. 1995). Having reviewed the pleadings, declarations, and  
19 exhibits submitted by the parties, the Court finds that plaintiff has not provided sufficient  
20 evidence to persuade a reasonable factfinder that defendant discriminated against him because of  
21 his age. Washington, 10 F.3d at 1432.<sup>2</sup>

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23 <sup>2</sup> Plaintiff's objections to defendant's discovery responses are untimely and without merit.  
24 Pursuant to the Court's scheduling order, motions to compel were to be filed on or before May 18, 2006.  
25 Plaintiff did not raise his concerns regarding the sufficiency of defendant's discovery responses until he  
26 filed his opposition memorandum on July 19, 2006. Nor has he identified any rule of law or procedure  
which would require defendant to forego the objections stated in its discovery responses. After noting  
that plaintiff's interrogatory regarding the suspected "arrangement" was objectionable, defendant

1 Plaintiff has not attempted to show that his skill set and/or work experience made  
2 him competitive in the legal job market or that defendant's evaluation of his skills was  
3 inaccurate or in some way false. The evidence presented suggests that plaintiff's typing,  
4 grammar, word-processing, litigation skills, interview, and work experience were at or below  
5 average, making him an unlikely choice for a legal referral. The evidence also shows that  
6 plaintiff was represented by six agencies, including defendant, between 2002 and 2004, and that  
7 none of them was able to place plaintiff in a legal position. Nor does plaintiff's challenge to the  
8 veracity of Megan Corpuz create a genuine issue of fact regarding his qualifications or the  
9 propriety of his behavior. Plaintiff has not shown that Ms. Corpuz' statement that paralegals  
10 generally need three years of experience to be referred by defendant was untrue. The fact that  
11 some individuals with less than three years of experience had been placed by defendant does not  
12 invalidate the general rule. In addition, Ms. Corpuz was not the only person to interpret  
13 plaintiff's behavior as rude and/or unprofessional. The receptionist and Ms. Corpuz' supervisor  
14 also witnessed or responded to plaintiff's outbursts as he became more and more frustrated with  
15 defendant's inability to place him. Plaintiff has not, therefore, provided evidence from which  
16 the factfinder could conclude that defendant's stated reasons for not referring plaintiff for  
17 employment were false.

18 Having failed to show pretext, plaintiff must present evidence from which a  
19 reasonable factfinder could conclude that defendant's conduct was discriminatory in order to  
20 meet his burden of proof. Plaintiff has not, however, provided any evidence from which one  
21 could conclude that age discrimination was the real reason plaintiff was not given legal  
22 assignments. Plaintiff's claim of age discrimination rests solely on a receptionist's description  
23 of another applicant as "a young guy, seems nicely dressed, something like that." Greene Dep.

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25 provided a full and complete response which meets both the letter and spirit of plaintiff's inquiry. Even if  
26 they were timely made, plaintiff's objections would be overruled.

1 at 80. Plaintiff does not know if the applicant was seeking a legal position, does not know to  
2 whom the receptionist was speaking, and admits that the description was accurate. Such  
3 comments cannot give rise to an inference of age discrimination under state or federal law. The  
4 receptionist was not involved in the decision-making process about which plaintiff complains  
5 (DeHorney v. Bank of Am. Nat'l Trust & Sav. Ass'n, 879 F.2d 459, 467 (9th Cir. 1989)), the  
6 description "young guy" is ambiguous in that it could be a positive or a negative in this context  
7 (Beshty v. Gen. Motors Corp., 327 F. Supp.2d 208, 218 (W.D.N.Y. 2004)), and the statement  
8 constitutes a "stray remark" which, without more, does not show that the failure to send plaintiff  
9 out on assignment was because of plaintiff's age (Merrick v. Farmers Ins. Group, 892 F.2d 1434,  
10 1438-39 (9th Cir. 1990)). See also Kirby v. City of Tacoma, 124 Wn. App. 454, 467 (2004),  
11 review denied, 154 Wn.2d 1007 (2005).

## 12 **Retaliation**

13 The burden shifting analysis discussed above also applies to plaintiff's claim of  
14 retaliation. Nidds, 113 F.3d at 919. To make out a *prima facie* case of retaliation, plaintiff must  
15 demonstrate that (1) he engaged in a protected activity, (2) he suffered an adverse employment  
16 action, and (3) there was a causal link between his activity and the employment decision. Raad  
17 v. Fairbanks N. Star Borough Sch. Dist., 323 F.3d 1185, 1196-97 (9th Cir. 2003). The burden  
18 then shifts to defendant "to articulate a legitimate, non-discriminatory reason for the adverse  
19 employment action." Manatt v. Bank of Am., N.A., 339 F.3d 792, 800 (9th Cir. 2003). Plaintiff  
20 bears the ultimate burden of persuasion, however, and must rebut the employer's justification for  
21 the adverse employment action by showing that the proffered reason was pretext or that  
22 retaliation was the real motivating factor. Stegall v. Citadel Broadcasting Co., 350 F.3d 1061,  
23 1068-69 (9th Cir. 2003). "Because Washington courts look to interpretations of federal law  
24 when analyzing retaliation claims, we . . . consider [plaintiff's] federal and state claims  
25 together." Little v. Windermere Relocation, Inc., 301 F.3d 958, 969 (9th Cir. 2002) (citing  
26

1 Graves v. Dept. of Game, 76 Wn. App. 705 (1994)).

2 Defendant argues that plaintiff cannot satisfy the third element of a *prima facie*  
3 claim of retaliation because he cannot demonstrate a causal connection between his complaint  
4 regarding age discrimination and defendant's decision to terminate its representation of plaintiff.  
5 The evidence submitted by the parties shows that, starting in May 2004, employees in  
6 defendant's legal division perceived plaintiff as demanding and/or argumentative and noted that  
7 he raised his voice in an unacceptable manner. In May and August 2004, plaintiff was told that  
8 defendant would not be his best resource for finding a legal position and he was encouraged to  
9 work with other placement agencies. On September 13, 2004, after a verbal altercation with  
10 defendant's receptionist and Ms. Corpuz, plaintiff accused defendant of discrimination,  
11 threatened to file suit, and was placed on the "Do Not Use" list. Second Decl. of Megan Corpuz  
12 at 8. On September 18, 2004, plaintiff mailed a letter to defendant alleging age discrimination.<sup>3</sup>  
13 Four days later, after receipt of plaintiff's letter, defendant was told that he had been placed on  
14 the "Do Not Use" list and that defendant would no longer represent him.

15 The Court will assume, for purposes of this motion, that the temporal connection  
16 between plaintiff's first complaint of discrimination on September 13, 2004, and his placement  
17 on the "Do Not Use" list gives rise to an inference of retaliation. Nevertheless, the chronology  
18 of events described above is insufficient to prove pretext. Defendant's stated reason for  
19 terminating its relationship with plaintiff was plaintiff's inappropriate and unprofessional  
20 behavior toward its staff. Long before plaintiff alleged discrimination, he had been counseled  
21 against raising his voice in an inappropriate manner and was twice told that Robert Half Legal  
22 was not going to be able to place him. In fact, defendant referred plaintiff to another agency in  
23 May 2004, made no efforts to place plaintiff after that date, and informed plaintiff that he was  
24 not qualified by experience or demeanor for employment through Robert Half Legal. As of

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25 <sup>3</sup> Neither party has submitted a copy of this letter for the Court's review.  
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1 August 5, 2004, more than a month before the first allegation of discrimination was made,  
2 plaintiff was aware that defendant would not place him and called demanding an explanation.  
3 Second Decl. of Megan Corpuz at 7. Defendant's conduct toward plaintiff did not change in any  
4 material way after May 2004. In the context of this case, defendant's placement of plaintiff on  
5 the "Do Not Use" list simply finalized an employment decision that had already been made.  
6 Even though this action was taken after plaintiff complained of discrimination, it does not give  
7 rise to an inference that plaintiff's complaint was the likely reason defendant refused to  
8 represent him. See Cohen v. Fred Meyer, Inc., 686 F.2d 793, 797 (9th Cir. 1982).

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10 For all of the foregoing reasons, defendant's motion for summary judgment is  
11 GRANTED. The Clerk of Court is directed to enter judgment in favor of defendant and against  
12 plaintiff.

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14 Dated this 28th day of August, 2006.

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17 Robert S. Lasnik  
18 United States District Judge  
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